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Seoul Semiconductor Co., Ltd. and
11 Seoul Semiconductor, Inc.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN FRANCISCO DIVISION

16 Nichia Corporation,
17 Plaintiff,
18 v.
19 Seoul Semiconductor Co., Ltd. and Seoul
Semiconductor, Inc.,
20 Defendants.

No. 3:06-CV-0162 (MMC)

SEOUL SEMICONDUCTOR
DEFENDANTS' MOTION *IN LIMINE*
NO. 6: MOTION *IN LIMINE* TO
EXCLUDE EVIDENCE OF NICHIA'S
SETTLEMENT WITH FORMER CO-
DEFENDANTS

21
22 **MOTION**

23 Defendants Seoul Semiconductor Co., Ltd. and Seoul Semiconductor, Inc.
24 ("Seoul") respectfully move this Court *in limine* for an order excluding evidence of Nichia's
25 settlement with former co-defendants. This motion is based on the Memorandum of Points and
26 Authorities filed herewith and the pleadings, records and papers on file in this case.

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Seoul moves *in limine* to exclude evidence or argument relating to Nichia's
5 settlement with Creative Technology, Ltd., Creative Labs, Inc., and Creative Holdings, Inc.
6 (collectively "Creative"). The settlement and its terms are inadmissible under Rule 408 of the
7 Federal Rules of Evidence. Moreover, the settlement should be excluded under Rule 403
8 because its probative value is substantially outweighed by the potential for undue prejudice, the
9 confusion of the issues in this case, the risk of misleading the jury and waste of time.

10 **II. ARGUMENT**

11 **A. Nichia's Settlement with Creative is Inadmissible Under Rule 408 of the
12 Federal Rules of Evidence.**

13 On January 10, 2006, Nichia sued Creative for patent infringement of the same
14 patents-in-suit here. On November 2, 2006, Creative settled with Nichia, and the claims against
15 Creative were dismissed. Dkt. No. 150. Evidence relating to this settlement is barred by Rule
16 408(a). Because the settlement between Creative and Nichia could have no other purpose other
17 than "to prove liability for or invalidity of the claim or its amount," it must be excluded from
18 evidence. Fed. R. Evid. 408(a).

19 Rule 408 provides that evidence of "furnishing or offering or promising to
20 furnish--or accepting or offering or promising to accept--a valuable consideration in
21 compromising or attempting to compromise the claim" which was disputed as to either validity
22 or amount, is not admissible to prove liability for a claim or its amount. Fed. R. Evid. 408(a).
23 Settlement agreements with third parties, including former co-defendants, are thus explicitly
24 inadmissible under Rule 408. *Rattler Tools, Inc. v. Bilco Tools, Inc.*, Nos. 05-293, 05-3777,
25 2007 WL 2008504 at *24 (E.D. La. July 06, 2007) (settlement agreements between plaintiff and
26 former co-defendants inadmissible as to remaining defendant under Rule 408(a)); *Inline*

1 *Connection Corp. v. AOL Time Warner Inc.* 470 F. Supp. 2d 435, 443-445 (D. Del. 2007)
2 (granting motion *in limine* under F.R.E. 408 to exclude testimony or opinions concerning
3 settlement offers made by plaintiff to other parties accused of infringement); *Pioneer Hi-Bred*
4 *Intern., Inc. v. Ottawa Plant Food, Inc.*, 219 F.R.D. 135, 144-45 (N.D. Iowa 2003) (granting
5 motion *in limine* under F.R.E. 408 and F.R.E. 403 precluding evidence of settlement with co-
6 defendants and confirming decree); *PharmaStem Therapeutics, Inc. v. Viacell Inc.*, No. C.A.-02-
7 148-GMS, 2003 WL 22387038, *2-4 (D. Del. Oct. 7, 2003) (holding that Rule 408 barred any
8 evidence regarding settlements/licenses with third parties under threat of infringement litigation),
9 *aff'd in part, rev'd in part on other grounds*, -F.3d -, 2007 WL 1964863 (Fed. Cir. July 9, 2007).

10 **B. Evidence that Creative Settled with Nichia is not Probative, Would be**
11 **Prejudicial, Confuse the Issues, Mislead the Jury and Waste Time.**

12 The settlement agreement has no probative value as to the merits of Nichia's
13 claims against Seoul. Creative had different accused products, and may have had many reasons
14 why it wanted to settle the case. It cannot be probative on liability or damages. Moreover, if
15 Nichia is permitted to mention its settlement with Creative or introduce evidence showing that
16 Creative settled, Seoul will be unduly prejudiced, the jury will be misled and the issues confused.
17 The terms of the settlement are confidential. Evidence of its existence is likely to lead the jury to
18 conclude that Nichia's claims have merit and that its rights have been violated. This would
19 unduly prejudice Seoul, confuse the issues, and mislead the jury. *See Fresenius Medical Care*
20 *Holdings, Inc. v. Baxter Intern., Inc.*, No. C-03-1431-SBA, 2006 WL 1627065, *1 (N.D. Cal.
21 June 13, 2006) ("'[u]ndue prejudice' within [the context of Rule 403] means an undue tendency
22 to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.")
23 (quoting Advisory Committee Notes to Fed. R. Evid. 403).

24 In addition, introduction of such evidence would require the introduction of
25 evidence by Seoul to rebut Nichia's evidence. The consequence will be a mini-trial to determine
26 whether and to what extent Nichia's claims and Seoul's defenses are the same as Creative's, and

1 then determine what light the Creative settlement sheds on the merits of the claims against Seoul.
2 This would confuse the issues and waste time at trial. *Pioneer*, 219 F.R.D. at 145 (N.D. Iowa
3 2003) (“if the Decree is admitted, it will invite a “mini-trial” on similarities and differences in
4 the facts regarding the “same” claims against the other defendants to determine what, if any,
5 light the Decree sheds on the value of the claim against Ottawa”).

6 The minimal (at best) probative value of the Creative settlement with Nichia is
7 “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or
8 misleading the jury, or by considerations of undue delay, waste of time, or needless presentation
9 of cumulative evidence.” Fed. R. Evid. 403. It must therefore be excluded at trial.

10 **III. CONCLUSION**

11 For the foregoing reasons, Nichia should be precluded from offering evidence or
12 argument that Creative settled with Nichia.

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15 DATED: August _____, 2007

16 Bingham McCutchen LLP

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19 By: _____ /s/ Beth H. Parker
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21 Attorneys for Defendants
22 Seoul Semiconductor Co., Ltd. and Seoul
23 Semiconductor, Inc.
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